

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

SPEARS WATER COMPANY)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 96-449
)	
KENTUCKY-AMERICAN WATER)	
COMPANY)	
)	
DEFENDANT)	

O R D E R

On September 12, 1996, Spears Water Company, Inc. ("Spears") filed a Complaint with the Public Service Commission ("Commission") naming Kentucky-American Water Company ("Kentucky-American") as the Defendant. According to the Complaint, Kentucky-American was in the process of installing a meter to serve the property of John Ragland, 3533 Walnut Hill Road, located in an area which had been served by Spears for over 20 years. Spears believed this to be duplication of service and a serious detriment to its well-being. Spears therefore asked the Commission to prohibit Kentucky-American from serving Spears' existing customers and from soliciting any of Spears' existing customers for water service. Spears also requested that Kentucky-American be instructed to refrain from providing service to any of Spears' existing customers until this matter is resolved.

Kentucky-American responded to Spears complaint on September 25, 1996. According to Kentucky-American, the Complaint should be dismissed as Spears failed

to state a claim upon which relief could be granted. Kentucky-American also contends that the question raised by the Complaint is res judicata. In support of its position, Kentucky-American stated the following: Mr. Ragland applied to Kentucky-American for service at 3533 Walnut Hill Road and executed a service contract with Kentucky-American. Kentucky-American in turn provided service to Mr. Ragland through its existing Jack's Creek Pipeline. Kentucky-American received a Certificate of Public Convenience and Necessity from the Commission in Case No. 91-359¹ for the purpose of constructing this pipeline. Spears appealed the Commission's decision in that proceeding to the Franklin Circuit Court, arguing duplication of service and wasteful duplication. The Franklin Circuit Court upheld the Commission's decision. Kentucky-American furthermore denies that by providing service to anyone in the vicinity of the Jack's Creek Pipeline it will seriously affect Spears.

On September 19, 1996, Spears filed a Motion for Cease and Desist Order, to which Kentucky-American filed a response on October 2, 1996. Spears requested that the Commission prohibit Kentucky-American from contacting existing customers of Spears about providing service and from connecting any existing customers of Spears to Kentucky-American's distribution system. Kentucky-American filed its opposition to Spears' motion on October 2, 1996. On January 31, 1997, Spears requested that a hearing be scheduled in this matter.

¹ Case No. 91-359, Application of Kentucky-American Water Company for a Certificate of Public Convenience and Necessity Authorizing the Construction of Approximately 49,000 Feet of 24" Main, 400 Feet of 12" Main, 240 Feet of 8" Main, With Associated Valves and Fittings, Known as the "Jack's Creek Pipeline."

Having reviewed the evidence of record, and being otherwise sufficiently advised, the Commission finds that:

1. Kentucky-American was granted a Certificate of Public Convenience and Necessity to construct the Jack's Creek Pipeline by Order of the Commission in Case No. 91-359.²

2. Spears appealed the Commission's decision in Case No. 91-359 to the Franklin Circuit Court in Civil Action No. 92-CI-00851, wherein the Commission's decision was affirmed.³

3. As noted at page four of the Commission's Order of April 17, 1992, in Case No. 91-359, pursuant to KRS Chapter 278, neither Spears nor Kentucky-American has defined service territories and the Commission is without any statutory authority to in effect create such defined service territories by prohibiting Kentucky-American from providing service to individuals living along its Jack's Creek Pipeline.

4. In Civil Action No. 92-CI-00851, the Franklin Circuit Court in its Opinion at page seven, citing Kentucky Utilities Co. v. Public Service Commission, Ky., 390 S.W.2d 168, 175 (1964), noted in response to the plaintiff's discussion of economic protectionism that "This jurisdiction has long held that utilities are not entitled to protection from

² Case No. 91-359, Final Order issued April 17, 1992, modified May 26, 1992. Attachments 1 and 2.

³ Civil Action No. 92-CI-00851, Spears Water Company, Inc., Jessamine County Water District No. 1, Lexington-South Elkhorn Water District, and City of Nicholasville vs. Kentucky Public Service Commission and Kentucky-American Water Company. Final Order entered March 9, 1993. Attachment 3.

competition." The Commission does not have the authority to reverse the findings of the Franklin Circuit Court on this issue by now granting Spears that very protection.

5. 807 KAR 5:006, Section 14, defines under what conditions a utility may refuse or terminate service to a customer. If none of these conditions apply to Mr. Ragland, or any other person residing along the Jack's Creek Pipeline, Kentucky-American does not have the right to refuse service if requested. Kentucky-American's attention should be called, however, to page five of the Commission's Order of May 26, 1992, in Case No. 91-359 wherein reference is made to a statement by Kentucky-American that it will not solicit any existing customers of Spears.

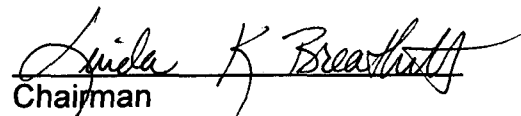
6. Spears' request for a hearing should be denied pursuant to KRS 278.260(2).

IT IS THEREFORE ORDERED that:

1. Spears' Motion for Cease and Desist Order is denied.
2. Spears' request for a hearing is denied.
3. Spears' complaint against Kentucky-American is dismissed.

Done at Frankfort, Kentucky, this 18th day of February, 1997.

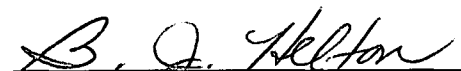
PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman

ATTEST:


Executive Director


Commissioner